

Remarks / Arguments

Claims 3-9, 13, and 19-27 are pending in this application. Claims 1-2 and 14-18 have been canceled previously. Claims 10-12 have been canceled in the present amendment. No new matter has been added.

Claims 10-12 have now been canceled as they relate to non-elected subject matter.

It is believed that claims 19-22 may have been allowed erroneously, as discussed below. If these claims should not have been allowed, they will be canceled in response to the next official action.

Information Disclosure Statements

Applicants confirm that the examiner has returned the initialed copies of the Information Disclosure Statements submitted on 13 March 2002 and 13 August 2002. These were attached to the official action dated 28 January 2004.

However, the examiner has not yet reviewed the art cited in the Information Disclosure Statement submitted 18 June 2004. He is requested to do so.

Method of synthesis claim 9

In reviewing this file, applicants have noted that claim 9 was not included in restriction group (I), which was elected, but that the examiner has nevertheless examined it and allowed it after applicants removed recitals of heterocycles. Applicants believe that this is proper, as claim 9 relates to processes for synthesis of the claimed compounds, which are deemed to be patentable. Applicants thank the examiner for his consideration of this claim.

Method of treatment claims 19-27

In the preliminary amendment dated 12 March 2002, the applicants canceled "use" claims 1, 2, and 14-18. They also amended claims 3-13, and added new claims 19-27.

Claims 19 and 20 are method of treatment claims replacing the original “use” claim 1. Claims 21 and 22 are method of treatment claims replacing the original “use” claim 2. Claim 23 is a method of treatment claim replacing the original “use” claim 14, and recites administration of a compound of formula I according to claim 3. Claim 24 is a method of treatment claim replacing the original “use” claim 15, and depends upon claim 23 for a recital of administration of a compound of formula I according to claim 3. Claim 25 is a method of treatment claim replacing original “use” claim 16, and recites administration of a compound of formula I according to claim 3. Claim 26 is a method of treatment claim replacing original “use” claim 17, and recites administration of a compound of formula I according to claim 3. Claim 27 is a method of treatment claim replacing original “use” claim 18 and depends upon claim 26 for a recital of administration of a compound of formula I according to claim 3.

In his restriction requirement, the examiner placed method of treatment claims 19-27 in restriction group (VIII).

In their response, applicants requested that the examiner include method of treatment claims 23-27 in restriction group (I), as these claims relate to treatment by administration of a compound of formula I according to claim 3, which deals with compounds of elected restriction group (I). Applicants did not request inclusion of new claims 19-22 in restriction group I because these claims do not require administration of a compound of formula I according to claim 3.

In his official action dated 28 January 2004, the examiner stated “Claims 19-27 drawn to method of use of compounds of formula I, have been examined along with the elected invention of Group I.” The examiner apparently overlooked the fact that claims 19-22 are not drawn to use of compounds of formula I. The examiner objected to claims 19-27 as well as claims 3-13 for containing elected and non-elected subject matter and stated that claims drawn solely to the elected invention would appear allowable.

In the applicants’ response dated 23 April 2004, the applicants removed from the claims all recitals of heterocyclic groups, thereby removing the non-elected heterocyclic subject matter, but did not cancel non-elected claims at that time. In that response, applicants also overlooked the fact that claims 19-22 are not drawn to use of compounds of formula I.

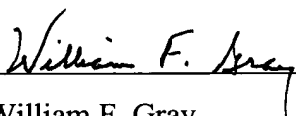
In the official action dated 14 July 2004, the examiner stated "claims 3-13 and 19-27 (all claims in part) are currently pending in this application." He stated that claims 3-13 (in part) are withdrawn from further consideration, as being drawn to a non-elected invention. The examiner did not comment upon claims 19-22, which were not part of the elected restriction group, and apparently assumed that these claims properly fall within the elected restriction group as dealing with use of the compounds being claimed. It is deemed that this is an oversight by the examiner.

If the examiner has in fact considered claims 19-22 and wishes to allow them, applicants will accept these claims. However, if the allowance of claims 19-22 is a mistake, applicants cannot accept them without bringing the issue to the examiner's attention. The examiner is therefore requested to review his allowance of claims 19-22 and take any necessary corrective action or confirm the allowance of these claims.

In view of the above amendments, this application is deemed to be in condition for allowance, and allowance is accordingly requested.

Respectfully submitted,

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Date: 14 Oct. 2004



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